

# COURTS OF JUSTICE (IRELAND).

Copies of all COMMUNICATIONS between the JUDGES of the Courts of Equity and Law in *Ireland* and the IRISH GOVERNMENT, and with the COMMISSIONERS of Judicial and Revenue Inquiry, respecting The MEASURES proposed to Government by those Commissioners for consideration; between the 1st May 1821 and the 1st February 1826;—together with, A STATEMENT of Measures adopted in consequence :—*Viz.*

- N<sup>o</sup> 1.—Copy of a Letter from the Right Honourable Henry Goulburn, dated Dublin Castle, 25th November 1824, to The Lord Chief Baron of the Court of Exchequer in Ireland, requesting his Observations upon the Ninth Report of the Commissioners of Revenue Inquiry, as to the proposed Transfer of Revenue Cases to the Court of Exchequer.
- N<sup>o</sup> 2.—Copy of a Letter from the Lord Chief Baron, dated the 14th January 1825, to the Right Honourable Henry Goulburn, in reply.
- N<sup>o</sup> 3.—Copy of a Letter from the Right Honourable Henry Goulburn, dated Dublin Castle, 25th January 1825, addressed to the Justice Barons of the Court of Exchequer in Ireland, upon the subject of the Ninth Report of the Commissioners of Revenue Inquiry.
- N<sup>o</sup> 4.—Copy of a Letter from the Justice Barons of the Court of Exchequer, dated Dublin, 22nd February 1825, to the Right Honourable Henry Goulburn, in reply.
- N<sup>o</sup> 5.—Copies of Communications between the Irish Government and the Commissioners of Judicial Inquiry, upon the subjects  
Of Remuneration of the Officers of the Court of Chancery in Ireland, by Fees, or by Fixed Salary;  
And, Investigation of the Office of Sheriff in Ireland.

---

*Ordered, by The House of Commons, to be Printed, 8 March 1826.*

---

- N<sup>o</sup> 1.—Copy of a LETTER from the Right Honourable Henry Goulburn, dated Dublin Castle, 26th November 1824, to the Lord Chief Baron of the Court of Exchequer in Ireland, requesting his Observations upon the Ninth Report of the Commissioners of Revenue Inquiry as to the proposed Transfer of Revenue Cases to the Court of Exchequer.

My Lord,

Dublin Castle, 26th November 1824.

IT is understood to be the intention of the Lords Commissioners of the Treasury, early in the ensuing Session of Parliament, to submit to the consideration of The House of Commons a Bill for giving effect to the recommendation contained in the Ninth Report of the Commissioners of Inquiry into the collection and management of the Revenue in Ireland. As the recommendation of the Commissioners involves a change in the mode of Proceedings in the Court of Exchequer, I have received the Lord Lieutenant's commands to transmit to you a copy of that Report, and to request, that if your Lordship has any observations or suggestions to make with respect to it, I may receive them sufficiently early to bring them under the consideration of the Commissioners of the Treasury before the meeting of Parliament.

I have, &c.  
(signed) Henry Goulburn.

A true copy, *W. Gregory.*

The Lord Chief Baron,  
&c. &c. &c.

N<sup>o</sup> 2.—Copy of a LETTER from the Lord Chief Baron of the Court of Exchequer in Ireland, dated Rockbarton, 14th January 1825, to the Right Honourable Henry Goulburn; with Observations on the Ninth Report of the Commissioners of Revenue Inquiry; as to the proposed Transfer of Revenue Cases to the Court of Exchequer.

Sir,

Rockbarton, 14th January 1825.

I HAVE had the honour to receive your letter of the 26th November last, stating that you transmitted to me, by the Lord Lieutenant's commands, a copy of the Ninth Report of the Commissioners of Revenue Inquiry, and requesting, that if I had any observations or suggestions to make with respect to it, that you may receive them sufficiently early to bring them under the consideration of the Lords Commissioners of the Treasury before the Meeting of Parliament.

As soon, therefore, as I was at liberty to do so I read over this Report, and considered attentively the very important matters contained in it; the object which it proposes, is "The immediate abolition of the several existing Courts of the Chief Commissioners, of the Sub-Commissioners, and of the Commissioners of Appeal, and the Transfer of every branch of the Jurisdiction exercised by them to the Court of Exchequer in Dublin."

I do not find that the objections which have been taken to those courts extend practically to the Chief Commissioners, or the Commissioners of Appeal; they are principally confined to the Sub-Commissioners, whose jurisdiction seems to be condemned, both in principle and practice.

To form an opinion how far their decisions have been injurious to the Crown, or grievous to the subject, it would be necessary to ascertain the number of decisions made by them within some given period, and the number of appeals brought from those decisions; how many of these were brought by the Crown; how many by the subject; how many of the latter were dilatory, and afterwards abandoned, and how many were prosecuted to a final decision; and lastly, how many were decided ultimately in favour of the Crown, and how many in favour of the subject.

These facts, I presume, were inquired into, but they are not given in the Ninth Report, because it professes to proceed upon a conviction already formed; and instead of bringing forward "numerous and conflicting opinions," confines itself to stating distinctly those only upon which the Commissioners have principally relied in forming their own decision.

This leads me to a conclusion, in which I hope I am not mistaken, that it is not required of me to offer any opinion upon the policy of the proposed measure, but merely to consider the bearing which the intended project may have upon the Court of Exchequer; and in this view only will I trouble you with any observation.

The duties hitherto discharged by those courts, which it is now in contemplation to abolish, is very multifarious and embarrassing. The Report states, "It is true that the provisions and penal clauses of the Revenue Acts which apply to England are nearly as multifarious and complicated as they are in Ireland; but in England their operation is confined to comparatively narrow bounds, and affect the interests of a limited class of persons; whilst in Ireland no part of the country is exempt from their operation, and scarcely any class of the Public are secure from being in some shape or other brought within the effects of their operation."

The administration of these laws is now sought to be given to the Court of Exchequer in addition to its ordinary duties, principally on these grounds; first, because it "must undoubtedly be considered as the primary and constitutional tribunal for their decision;" and secondly, because "comparing the amount of business at present assigned to the Court of Exchequer in Ireland with that which is discharged by the same Court in England, no objection can be made to it by the Barons on the ground of increased labour."

Upon the first ground, I would observe that the Courts of King's Bench and Exchequer exercise a general jurisdiction in law-matters, which in each court is founded on a separate fiction. This has misled many persons to suppose that they ought to be confined within their original limits; but these fictions have been so long and so well established, that so far back as the time of Lord Coke, that great Judge was of opinion that they could not be then shaken unless by an Act of Parliament.

Parliament. The Court of Common Pleas, though it has original jurisdiction, founds its proceedings upon a fiction also. Those three superior courts, frequently recognized by the Legislature, have become the hitherto of the subject; the Act of the 43d of the late King for equalising the process was enacted for the purpose of giving an equal facility of suing in them all. It is submitted, therefore, that nothing should be done which may have the effect of obstructing or impeding the general distribution of justice in any of them. It is true that the Court of King's Bench is a Crown Court, and that the Court of Exchequer is a Fiscal Court, but it does not follow that the former is to deliver the gaol, or that the latter is to administer the Excise-laws. The Excise system was established so long since as the reign of Charles the Second; the laws by which it was created and collected have been always classed amongst those which statesmen call unconstitutional; from its commencement, as Sir William Blackstone says, the very name of the Excise was odious to the English nation; our ancestors, therefore, thought it wise to erect distinct courts, with peculiar jurisdictions, to preside over it; by this means they preserved in the superior courts the pure, and, if I may be allowed the expression, the popular administration of justice. They provided at the same time, as they supposed, for the sure and effectual collection of this branch of the Revenue. The mode in which justice has been administered in those Excise courts has, to a late period, indirectly received the sanction and approbation of Parliament; for matters not otherwise properly belonging to them have been drawn within their jurisdiction by the 39th Geo. 3. c. 53 s. 15, and the 3d Geo. 4. c. 4. And it may be further observed, that in all those compound cases called "The Custom Excise," both duties have been collected under the Excise jurisdiction from its greater convenience; therefore, as the Excise courts are coeval with the Excise, which in its original inception was excluded from the Exchequer, how can it be said that the Court of Exchequer is the primary tribunal for its decision; or how can it be called the constitutional tribunal for that purpose as long as there is any thing peculiar in the temperament of its laws? If the general stream of justice in the Court of Exchequer is to receive an accession from the Excise waters, let them flow into it pure and unadulterated; as long as they betray any tint of their original source they should continue to run in their ancient channel.

I have been led into this observation by those parts of the Report which speak of providing "that as far as possible, the forms of proceeding observed in those cases" should be those of ordinary and general application; and again, "that the administration of this branch of the law should be provided for in a manner as little objectionable as the peculiar character of it will admit." This obliges me humbly to protest against any compromise of principle; against any minute calculation of how much of the Constitution may with safety be retained, and how much of necessity must be given up; if the Exchequer is selected, it should be taken with its encumbrances, "*Judicium Parium et Lex Terræ*;" for instance, if examiners are to be appointed let them have no new or extraordinary powers, or any other than those which are delegated to their examiners by the different courts of equity in England and Ireland; and where the intervention of a jury becomes necessary, let it be impanelled according to the usual course of the law, and not selected under any peculiar provisions; let it be a jury of the country, and not an Excise jury. The endeavour to give a constitutional colour to peculiar laws by the character and authority of the Judge who administers them, is a dangerous experiment; if he fails, he must fall with them. The system therefore should be raised to the court, and the court should not in any degree descend to meet it; otherwise it will be said that you fly from the Excise courts to the Exchequer with the Constitution in your hand; and that as soon as you arrive there you abandon it for the security of the Crown. I hope we may not be called upon to administer any laws that are not suited to the meridian of all the superior courts. Upon the second head, the Report very justly anticipates that no objection will be made by the Barons on the ground of increased labour; if there is sufficient foundation for this objection it should come from others, and not from us. The doors of the Exchequer may be contracted or enlarged according to the will of the Legislature, but the present state of our business should be well known in order to regulate and guide its discretion. It may be inferred from the Report, that, compared with the court of Exchequer in England, we have less duty to discharge; as this is not stated as a fact into which the Commissioners have inquired, but is merely used incidentally as an argument, it is possible they may be mistaken. But be this as it may,

may I have no means here of inquiring into the fact, which from what follows may be easily ascertained.

The Court of Exchequer embraces law, equity, and revenue, and therefore its business in the two first branches admits of comparison respectively with all the superior courts of law and equity in Ireland. I have delayed this letter some days in order to obtain information which may enable you to form some estimate on this subject.

The amount of stamp and law-fund duties received in each of the three superior courts of law from Hilary Term 1822 to Trinity Term 1824, being the last period to which they can be made up, is as follows :

|              |   |   |   |   |   |           |   |                  |
|--------------|---|---|---|---|---|-----------|---|------------------|
| King's Bench | - | - | - | - | - | £. 27,140 | 5 | 11 $\frac{1}{2}$ |
| Common Pleas | - | - | - | - | - | 10,948    | 3 | 6 $\frac{1}{2}$  |
| Exchequer    | - | - | - | - | - | 28,084    | 3 | 4                |

The amount included in the above of stamp and law-fund duties upon *judicial rules*, which is another good criterion on which to form an estimate, stands thus ;

|              |   |   |   |   |   |       |    |    |
|--------------|---|---|---|---|---|-------|----|----|
| King's Bench | - | - | - | - | - | 8,124 | 17 | 3  |
| Common Pleas | - | - | - | - | - | 4,743 | 11 | 10 |
| Exchequer    | - | - | - | - | - | 9,142 | 19 | 1  |

I will now add the number of judicial rules made in, and writs of *capias* issued from, the same courts for the last year, ending 31st December 1824 :

|                        |               |               |             |
|------------------------|---------------|---------------|-------------|
|                        | King's Bench. | Common Pleas. | Exchequer.  |
| Judicial Rules         | - - - 3,315   | - - - 2,133   | - - - 3,952 |
| Writs of <i>Capias</i> | - - - 6,690   | - - - 3,340   | - - - 7,246 |

From this statement of the Law business discharged by the Court of Exchequer it may be inferred that its Equity business is inconsiderable ; upon investigation it will be found otherwise. The Court of Exchequer exercises a concurrent equity jurisdiction with the Court of Chancery, which is divided into two, the Court of the Lord Chancellor, and the Court of the Master of the Rolls, and therefore any given portion of equity in the Exchequer is equal to double the same quantity in Chancery ; because the latter court has a twofold facility of discharging it. It appears that the number of bills filed in the Court of Chancery during the last year (1824) amounts to 825 ; and those filed in the Exchequer during the same period, to 424 ; and I believe the general business of those courts in matters in which they exercise a concurrent jurisdiction is nearly in the same proportion.

From these facts it is submitted that the Law and Equity sides of the Court of Exchequer are sufficiently occupied ; and that it cannot receive the additional business, now in contemplation, without much inconvenience to the general interests of the court.

I do not think it necessary at present to enter more minutely into details ; but I cannot pass over the proposition to extend the Civil Bill Acts to a certain class of Excise cases without making an observation upon it : Those Acts were originally made to enable poor people to recover small debts in a summary way ; they have been since much extended, and have in proportion increased the duties of the Assistant Barrister and the Circuit Judge ; but in all cases they may have the assistance of a jury, and no case of any importance or difficulty is decided without one. I therefore think that in the Excise cases, where not only property but character will be in issue, and where contradictory evidence may be expected, a jury would be almost uniformly resorted to ; and this, waving all other objections, would, I fear, make the trial of them at the assizes impracticable ; but I hope a matter of so much importance will not be suffered to rest upon my single opinion, but that all the Judges will be consulted upon it ; they know, at least, as much of the subject as I do ; and unless in communication with them, I must speak with diffidence and distrust.

As to the extension of the English Act of the 37th George 3, c. 18, to Ireland, whatever my personal disinclination to it may be, if it has been found beneficial in England, I feel I am not at liberty to object to it here ; but if the measure is merely intended to open a back-door to the Excise, I humbly solicit that the *Puisses Barons* may be consulted upon it. Indeed the whole intended measure bears principally upon them, particularly this last proposition, which, whilst it constitutes the Chief Baron

sole

sole judge in Equity, may be thought to reduce them to the situation of Commissioners of Appeal.

I have freely submitted these statements and observations, because, under the circumstances, I have felt it to be my duty to do so; but I disclaim the most remote disposition to embarrass any measure calculated for the public service, which it will be always my duty and inclination to promote.

I have the honour to remain, &c. &c. &c.

(signed) S. O. GRADY, c. s.

A true Copy, C. W. Flint.

The Right Hon. Henry Goulburn,  
&c. &c. &c.

N<sup>o</sup> 3.—Copy of a LETTER from the Right Honourable Henry Goulburn, dated Dublin Castle, 25th January 1825, addressed to the Puisse Barons of the Court of Exchequer in Ireland, upon the subject of the Ninth Report of the Commissioners of Revenue Inquiry.

Sir,

Dublin Castle, 25th January 1825.

I HAVE the honour to send you herewith, by command of the Lord Lieutenant, the Ninth Report of the Commissioners of Inquiry into the collection and management of the Revenue arising in Ireland and Scotland, &c. on "Revenue Jurisdiction." And I am directed by his Excellency to request your opinion with respect to the course proposed, of transferring the trial of all Revenue Cases to the Court of Exchequer.

I have, &c.

(signed) Henry Goulburn.

A true Copy, W. Gregory.

The Hon. Baron Sir C. W. Smith, bart.  
&c. &c. &c.

Similar Letters to Hon. Baron Pennefather, Hon. Baron McClelland.

N<sup>o</sup> 4.—Copy of a LETTER from the Puisse Barons of the Court of Exchequer in Ireland, dated Dublin, 21st February 1825; to the Right Honourable Henry Goulburn, upon the Ninth Report of the Commissioners of Revenue Inquiry.

Sir,

Dublin, February 21st 1825.

WE have had the honour of receiving your letters of the 25th of the last month, inclosing the Ninth Report of the Commissioners of Revenue Inquiry, and written by command of the Lord Lieutenant, for the purpose of notifying to us his Excellency's desire of hearing our opinion on the proposed Transfer of Revenue cases to the court in which we sit.

The Report which you have sent us (as supplying a part of the probable foundations of our opinion) we have accordingly and carefully perused, and beg to add that we have also read the copy of a letter addressed to you by the Lord Chief Baron of this court, and relating to the matters which are discussed in that Report; the letter which produced his Lordship's communication we have never seen, nor did we see his answer to it until several days after it had been returned. We take the liberty of respectfully conjecturing that this answer may have appeared to his Excellency, as it does to us, to contain able and satisfactory views of the subject which it treats; to throw light upon its obscurity and complications; to refer to principles which cannot be abandoned without danger; and to submit suggestions with respect to the application of these principles, important, and deserving the honour of his Excellency's attention.

Called upon as we are to deliver an opinion, the offer of which might be obtrusive if unasked, we of course are bound unreservedly to declare it; submitting at the same time to the better judgment of the Lord Lieutenant to decide whether this opinion be an erroneous or a right one.

Accordingly we have, with deference, to state that our impressions are against the course proposed of transferring the trial of all Revenue Cases to our court; and we proceed to submit to his Excellency's consideration some of the grounds upon which this opinion has been formed.

On a comparative view of the quantity of general business transacted in the several superior courts in Ireland it seems to be the less necessary to dwell; not only by reason of those returns which the Lord Chief Baron's letter has supplied, but because in that opinion of Mr. Leslie Foster which the Commissioners have adopted, and embodied in their Report, we find it stated that "the Barons of the Exchequer have a greater amount of business imposed upon them than the judges of any other court; that committing to them the Revenue jurisdiction would augment the disproportion; that they are already, perhaps, entitled to indulgence; and that to an increase of their labour there might be said to be some reasonable objection."

It follows, that to dispose deliberately, and well, of the quantity of business which they have already, requires exertion on the part of the Barons which it is their duty to make, and in which we trust they have not been found deficient; indeed the mere fact of their having to sit for about a month in every year longer than either of the Common-Law Courts, furnishes some proof of their not being the least occupied amongst them. Thus circumstanced, we humbly conceive it to be improbable, that, under any arrangement, the Barons should be able, in addition to the present Law and Equity business which they discharge, to go through the entire Revenue cases of this country. It might be indelicate, and apparently selfish, for them to object, on behalf of their own ease and convenience, to the imposition of an additional weight of business upon them; but on the behalf of the Suitor Public, it may be their duty to suggest the limited extent and nature of the human powers; and the more than probability, the almost certainty, that where a quantity of business, to which those powers are unequal, is imposed, either a portion of it will remain undone and in arrear, or the whole be performed in a precipitate, slovenly and imperfect way, to the great and manifest injury of the public. Whether we assume the one or the other consequence to arise, if arrear should be incurred, this must be either on the Revenue side, or in the Law and Equity department, according as precedence should be given to the one business or the other; in the former case the collection of the Revenue would be greatly, and, as it seems, irreparably injured; in the latter case, one of the superior courts would be so thronged with Revenue business as to be closed against a vast proportion of its general suitors, who would thus be obliged to seek redress in other courts, and those perhaps already too much occupied to have time for disposing of the additional business thus thrown back upon them; indeed, even supposing them to have the necessary time to spare, an arrangement which partially closes the Court of Exchequer against the public, and deprives the general Suitor of that *Electio Fori* which is his right, and which may be a most beneficial one, such an arrangement ought to be replete with advantages, great, manifest and certain, in order to atone for, or countervail, a mischief so serious as the one just noticed seems to be.

That the proposed transfer might more or less disparage and degrade our court; that it might, as it were, estrange and sever its jurisdiction from the principles and spirit of our law and constitution, with which that jurisdiction is at present intimately blended; that in calling us off from dispensing justice according to the general and noble maxims of constitutional law, and appointing us to administer the invidious though necessary exceptions to those rules, it might substantially degrade us from the station which we at present hold, and place us practically below those other courts to which we should still be nominally equal: That the proposed arrangement would be more likely to sink the Court of Exchequer to the level of the cases which it would have to try, than to raise these to the eminence which as a superior court it now maintains, all this appears to us to have been powerfully suggested by the Lord Chief Baron, and from his Lordship's suggestions we see no reason for our dissenting.

Perhaps there is another important consideration allied to this; it seems of consequence that seats upon the Bench should be an object to those members of the Bar whose eminence and full business supply vouchers of their competence to an able discharge of the judicial functions, otherwise the vacancies on the Bench would gradually be filled by persons of inferior character and qualifications. Now, if by means of the proposed arrangements, the Court of Exchequer should become one  
of

of less dignity and more labour than it is at present, not only the present Barons might find themselves cast down from that station, the eminence and benefits of which had induced them to quit the Bar, and which they had calculated on retaining *quam diu se bene gesserint*, but those who would be otherwise desirous of filling a vacancy in our court might in the new and projected state of things turn their backs upon it, and look to a seat upon other benches, where, while the emoluments were equal, the dignity was greater, the business more respectable, and the labour less: such a consequence would tend further to degrade the Court of Exchequer, by filling its bench from the inferior classes of the Profession.

To recur to what has been already said, that suitors driven from the Court of Exchequer by the pressure and precedence of its new Revenue business might find the other courts (even such of them as may be now less busily employed than ours), too much occupied to receive the accession of their suits. The King's Bench, for example, in addition to its civil business (to which alone the returns stated by the Lord Chief Baron will apply), has a great deal to dispose of on its Crown-side, and which must occupy a proportional quantity of its valuable time. The Common Pleas, too, besides that ordinary jurisdiction which it exercises concurrently with the other courts of law, has, in cases of real actions, and, for instance, of *quare impedit*, one which is peculiar to itself. These latter have of late years been rather numerous, are from their importance frequently tried at Bar, and such trials, by reason of their intricacy and importance, may occupy, as they have hitherto occupied, no inconsiderable portion of the time of that court during term.

If we be right in calculating on the improbability that the Court of Exchequer would be able to dispose effectually of its present share of the Law and Equity business of the country, together with the proposed addition of Revenue cases, still less will it be able to accept what otherwise would be its share, when the late reduction of the stamp-duties shall have produced that large increase in the Law and Equity business in Ireland which may with the greater confidence be expected, because this effect is already beginning strongly to appear; yet this share of the probable augmentation of public business, which the projected transfer may disable the Court of Exchequer from accepting, it cannot decline without injury to the public, or without contributing to produce that delay of right and justice against which the provisions of *Magna Charta* pledge the Crown.

Perhaps from the projected change a consequence might arise, different from, but not less mischievous, than those which we have been anticipating; its more immediate effect would probably be an imperfect discharge of complicated and overwhelming duties, and yet an increasing and pernicious accumulation of arrears, but this consequence might be productive of another ultimate, injurious and permanent effect, namely, that the ordinary suitors in Law and Equity would retire or be driven from the Court, and the Exchequer be reduced and left to the mere determination of those Revenue cases, which are so much, *infra dignitatem* cases, the very nature and character of which may contribute not a little to that want of respectability and reputation which is urged against the tribunals before which at present they are primarily heard, and which nature and character, when introduced into our court, must produce similar effects and correspondent degradation.

The Report seems rather to anticipate a greater pressure of business in the court than what we have just adverted to as (possibly) the ultimate effect of the proposed transfer; and towards obviating what is thus foreseen, two remedies have been suggested:

The one is, that during the three days in every term, on which the Chief Baron sits at *Nisi Prius*, the three other Barons should sit for the hearing of Revenue cases, and also, that the court should sit for the same purpose for four days after the Equity Sittings that follow each Law Term.

The other project is to constitute the Chief Baron sole Judge on the Equity side of the Exchequer, and leave us to dispose of the Law and Revenue business in another court.

To the former of these plans we conceive that there are objections, from which we beg to select two, that strike us to be at once obvious and important; first, we conceive that it would be quite impracticable to dispose, within the twenty-eight additional days of sitting, which this plan allows for them in every year, of those numerous Revenue cases which at present give employment to so many tribunals, and occupy so much time; secondly, it appears to us that it would be highly injurious to the other business of the court that the Puisne Barons should give up to

Revenue business those three *Nisi Prius* days in term, which they at present employ in reading and considering the demurrers, bills of exceptions, special verdicts, and reports of Judges on motions for new trials severally pending in the court. By means of such perusal we are enabled to decide such cases when they come on more deliberately and yet more promptly; the very furnishing us with the books shows that such perusal is considered to form a portion of our duty; and to devote those days to the determination of Revenue cases would be to deduct so much time from the discharge of a momentous portion of the ordinary business of our court. That the Exchequer, under the existing state of things, sits for twenty-eight days more in every year than either of the other courts of law, and that this plan would increase their extra sittings to forty-two, are circumstances on which it is not for us to dwell; they will receive in the proper quarter whatever attention they may deserve. So far as the *Puisne Barons* are concerned, the number of their sitting-days would be increased to fifty-four; but we exclude from our calculation the twelve *Nisi Prius* days, because, that as to these, we consider the plan, which we are here discussing, not as adding to our labour, but as turning them into a channel prejudicial to the ordinary business, and general suitors of the court.

With regard to the second plan, which enables the Chief Baron to sit alone in Equity, and leaves to the three *Puisne Barons* the Law and Revenue Jurisdictions, we should humbly conceive, that even if that which is most uncertain were on the contrary ascertained, viz. that by such a division the proposed object would be obtained, it still might furnish matter for grave and anxious consideration how far it would be prudent thus to dismember one of the superior courts, and by splitting it into parts, to take from each much of the weight and authority which at present the entire enjoys. It might still be found a question deserving of attention, whether the Public, as suitors in Equity and at Law, have not something like a vested and prescriptive right to have their cases heard and determined by the united intellect of the four Judges who compose the court.

It might be worthy of inquiry, whether any thing short of a resulting benefit, quite apparent, and a strength of exigency to which all obstacles should give way, could warrant a depriving the Subject of a right highly valuable as well as ancient; its value admits of demonstration. It is demonstrated by every application for a trial at Bar which has been ever made.

If it should be thought that an answer to these objections will be found in the present constitution of the Court of Exchequer in England, we humbly conceive that to such an answer it may be replied, that the nature and amount of the English Revenue business, the circumstances, in point of weight, of the business of the English Exchequer, as collated with the present weight of ours, and lastly, the situation of England as compared with that of Ireland, may all have furnished premises conducting to conclusions widely different from those to which we ought to come; the benefit there may have been more certain and apparent; the exigency may have been greater, and the sacrifice have been less; assimilation may be desirable, but an indiscriminate application of the principle would produce mischievous effects, not only by innovating extensively, but by the forgetfulness which it would involve, that what corresponds with one state of things may be most incongruous with another, and what suits the meridian of England be quite unsuitable to the situation in which Ireland is placed; the comparative state of business in the English Exchequer and in ours may be known by procuring and collating their returns. That in the Revenue departments the same system which worked well in England might be inapplicable here, may be collected from the seventh page of the Ninth Report; and as to the general comparison of the situation of the two countries, and especially with regard to the degree of reverence in which the laws, and those who administer them, are held, we bear there is a contrasted difference between the prevailing sentiment in the two islands; and that accordingly, and for example, whatever tends to detract from the weight and authority of our Exchequer (as one of the superior courts) might add to those obstructions which already impede the administration of justice; and in short, the measure projected might produce effects very different amongst us from what might be expected from a merely similar one in England.

The shortness of the time within which our present communication must, in order to its being available, be made, will, we trust, excuse whatever deficiency in point of method it may betray. As each topic presents itself to our minds, provided it appear to us to be pertinent and material, we at once introduce it, though perhaps not

not always in its place, without that strict attention to order and arrangement, which, if further time were given, we should feel it our duty to bestow.

With this humble apology we beg to turn our attention to the mode in which the Report has recommended that the proceedings in Revenue cases, on the Equity side of the court should be conducted: It is suggested, "That the examiners shall be required, after seeing that the evidence on the part of the prosecution and defence is duly entered, to put all such supplementary questions to the witnesses as may appear to them necessary for ascertaining the real merits of the case." We beg leave to express a doubt, whether vesting such powers in an examiner be not a proceeding unheard of in a Court of Equity, and little consonant with the principles which control its practice, and which guide its jurisdiction; if the examiners were held competent to exercise such a power, it might almost be inferred that they were also qualified to decide the cause; and it might be said that the granting to them such a power approached to a virtual concession of this right of decision to them.

But let the written depositions in these Equity suits be taken as they may, we conceive that there is this further objection to them, that in numerous instances they may turn out to have been a useless waste of time and of expense. In almost all Revenue cases in this country the question between the Crown and the subject turns upon a controversy as to facts, and not on principles of law, or the construction of a statute; on all matters of fact which shall be disputed in such cases, experience warrants our supposing that contradictory testimony will occur; now where, on the depositions, conflicting evidence occurs, a court of Equity scarcely ever will decide without submitting to the determination of a jury the facts with regard to which this conflict has arisen; thus many, perhaps nine out of ten, of these Equity suits are likely to terminate necessarily in an issue, and a trial by jury. To the summary jurisdiction by Civil Bill the same observation will apply, as we more than doubt whether any Judge will be found willing to decide on Civil Bills, so seriously affecting not only the property but the character of a defendant, without resorting to the assistance of a jury; we therefore conceive it to be so probable as to be nearly certain, that in Revenue cases, whether the Crown proceeds on the Law or on the Equity side of our court, or by Civil Bill, the case, in any of these events, and in one or other of its stages, will come before a jury.

To such a tribunal it would ill become us to object, it is the one appointed by the Constitution for determining questions of fact, and must be a tribunal eminently agreeable to the Judge, whom it relieves from the grave responsibility, as well as the difficult and irksome task of coming to a conclusion upon evidence discordant and conflicting.

But, consistently with our general reverence and esteem for this tribunal, we may suggest to his Excellency's consideration, that from such a change of jurisdiction (not easily revoked if made) it is less difficult to foresee that serious consequences might arise, than to pronounce confidently that these consequences might not prove pernicious; neither does it seem improper to call his Excellency's attention to the sentiments of the Attorney and Solicitor General upon this point, as stated in their opinions, which are both embodied in the Ninth Report.

If it be conceived that in fewer instances than we have supposed, cases proceeded on by Civil Bill, or on the Equity side of our court, will ultimately come before a jury, the alternative seems to be that those cases will be summarily disposed of.

Now as to the granting of a summary jurisdiction in Revenue cases to our court, if we feel, whether as Barons of the Exchequer, or as Judges of the land, most decidedly averse from being invested with any such, we perhaps can justify this reluctance under the high authority of Lord Eldon, who, in commenting on the summary jurisdiction created by the Annuity Act in England, observes, that the summary jurisdiction over property thereby given was inconsistent with the policy of the Law and Constitution. (See Cooper's Chancery Reports, page 20.)

If that able and enlightened Judge felt himself warranted in applying such observations to the English Annuity Act, may we not respectfully protest, with even greater strength and reason, against being intrusted with a summary jurisdiction in Revenue cases, in all which our decisions would affect the property, and in many of them the character and personal liberty, of the defendants? To invest any men with such powers seems a step which demands great previous consideration, but to commit them to the Judges, might, as we humbly conceive, tend to disparage those functionaries in the estimation of the public, to raise or foment a jealousy

against a body who should be looked up to as vindicators and protectors, instead of being viewed with any feeling like suspicion or distrust; in short, to render them in general less useful, authoritative and efficient; and especially in those departments of their duty where they have to act and decide with the co-operation of a jury.

We beg leave here, before we conclude, to throw together in a brief form such further observations on the subject which we have been treating, as appear to us deserving of being submitted to the consideration of his Excellency the Lord Lieutenant.

In the eighth page of the Report the Commissioners observe that opinions, various and conflicting, had been offered to them upon the subject on which they have come to a decision, but that they have thought it advisable to state those only on which, in forming their determination, they had relied.

As of course they received no opinions, except from those whom they consulted, and consulted none but those whom they supposed competent to form a judgment deserving of attention, we appear warranted in pronouncing, that amongst persons qualified to discuss the question, a strong and serious diversity of sentiment has been disclosed as to the expediency of that change of system which their Report has recommended; and from this we infer, first, that the objections which we have submitted are the less likely to be quite unfounded, and secondly, that it might be the more expedient to pause upon a proceeding which is one of serious innovation upon very long established practice, which tampers with the foundations of one of those ancient and superior jurisdictions whose basis is connected with the first principles of the Constitution, and which does so, without any thing resembling unanimity upon the subject of the beneficial tendencies of such a change, but which, on the contrary, while in accordance with the opinions of some, is against those of others, perhaps equally qualified to form a sound one.

We confess we could have wished that some of those opinions, which the Commissioners thought less deserving of attention than those which are embodied in their Report, had accompanied these latter; we should naturally desire this, as all men are pleased to find their own judgment countenanced and corroborated by that of others; and the habits which it has belonged to our situation to form, lead us to place much stress upon the maxim and injunction of *audi alteram partem*.

Of course the Commissioners have attentively heard both sides, and accordingly we mean to do no more than express a wish, that those to whom their Report has been submitted had also an opportunity of doing the same.

Amongst the opinions which conflict with the decision announced by the Ninth Report appear to have been those of the late Attorney and Solicitor General of Ireland; and though to these the Commissioners oppose the opinions of the eminent persons who at present fill those high legal situations, it will be observed, that Mr. Plunket treats the change in contemplation not only as an important one, but one on the expediency of which he feels considerable difficulty in forming an opinion, while the Solicitor General (differing substantially on some points from Mr. Leslie Foster) pronounces his own plan as one, both in its outline and its details, free from most of those objections to which all others that came before him were manifestly subject; thus, if in this part of his opinion the Solicitor General be right, we have his high authority for observing that even an able man (as he is) may be wrong, and that accordingly, amongst those who approved of the transfer of jurisdiction which has been proposed, there were not a few that took erroneous views of the subject, and who for the mischief which they had pointed out suggested plans which they called remedial, but which were "manifestly objectionable, both in outline and detail."

We would next observe, that the fundamental positions of the Ninth Report appear to be as follows: first, that the present jurisdictions are of a most objectionable and faulty character and constitution; secondly, that they require to be abolished; and, thirdly, that the proposed Exchequer jurisdiction ought to be established in their room.

Now on these three statements we would observe, that they are so perfectly distinct that it would be a mistake to suppose that the truth of the second, or the third, depends upon, or is demonstrated by, that of the first position.

On the contrary, the present courts may be faulty, yet not so incapable of correction as that they ought to be entirely abolished; or again, though their constitution be so vicious that they ought to be put down, (and this not partially, but altogether,) it will be as far from following that the proposed transfer to the Court of Exchequer should

should be made, that not an inch of progress in the way of argument will have been gained towards advancing to this latter conclusion.

We have been hitherto merely inquiring how the Court of Exchequer might be affected by that transfer of jurisdiction with respect to which we have been consulted; but we may extend our views beyond the Barons of this court, and comprehend within them the case of all the Judges of Assize; for, considering the probability, that on proceedings in our court issues would often, and even generally, be directed, and that on proceedings by Civil Bill, the Judges of Assize would very frequently call in a jury to their aid: bearing in mind, too, the strong likelihood that these jury trials would from their importance, in many instances, occupy considerable time, we seem warranted in apprehending that the business of the circuits (weighty even at present) might be increased to an amount which it would be scarcely practicable to dispose of: in this notion we seem fortified by a strong passage in the opinion of the present Attorney-General, which will be found in the 16th page of the Ninth Report, and to which accordingly we beg leave to call his Excellency's attention.

In calculating the actual amount of circuit business, and estimating the difficulty of despatching more than is at present to be done, we must not, while enumerating the labours of an Assize Court in Ireland, omit to reckon one, which in England is unknown, we mean the passing of presentments, a portion of circuit business which is at once weighty and extremely irksome, and to which the notice of Parliament has of late been sufficiently directed to make it unnecessary that we should further dwell or insist on its importance.

On the vicious constitution of the Court of Sub-commissioners, or more properly speaking, on the practical effects of this constitution, we do not feel ourselves competent to the pronouncing our opinion, it would require an experience which we do not possess to enable us to form a judgment how far their practice atones for, or betrays, the vice imputed to their constitution; the ninth page of the Report refers us, on this point, to the testimony of the barristers who are usually employed in those courts; we doubt whether the number of appeals from the decisions of the Sub-commissioners might not supply a still better criterion of the soundness or unsoundness of their practice; if that practice have produced weighty and extensive grievances, the efforts of the aggrieved to obtain redress is likely to have been commensurate and co-extensive; at all events, as we have observed already, the practical mischiefs of those tribunals, if demonstrated so fully as to leave no room for doubt, would merely supply an argument for their reform or abolition, and go no length towards proving the utility of the transfer which has been proposed.

In the tenth page of the Report we have been perusing, it is noticed that for the trial of minor offences in the Revenue department, the court of the assistant barristers has been recommended, but it is objected that these are "already overloaded," and withal "unskilled in the laws of the Revenue;" how far, as Barons of the Exchequer, and members of the court of errors, and Judges of Assize, we, who have the honour to address you, are sufficiently barthened, or are not, and how far it may be the right and interest of the public to require that no more duties shall be thrown upon us than we are competent adequately to discharge; these are topics on which it is rather for others than for us to dwell. Upon the head of skill in the Revenue Laws, we would but observe, that while, as a Court of Revenue, we may be supposed to have knowledge of these sufficient for the performance of those duties which we are at present called on to discharge, it will not follow that in the exercise of a novel jurisdiction, in departments which have not been hitherto within our province, we should not be found deficient in that experience, and its offspring, knowledge, which are urged as objections to all who resort to the assistant barister's jurisdiction.

Connected with this last topic appear to us to be allusions which have been made to the primary and original business of our court, and suggestions, that its more general jurisdiction is bottomed on a fiction; arguments which prove too much are always rejected as delusive.

To infer from the position which we have just noticed any thing pertinent to the present subject might be to imply that the jurisdiction of the King's Bench should be confined to breaches of the peace, and that of the Common Pleas, to real actions, and the other subjects which were originally embraced within its province. It might be made to follow, that the business which occupies nine tenths of the present time

of the three superior courts, is a deviation from their legitimate line of duty, from which they have strayed, and to which they ought to be recalled.

Arguments thus drawn from the infancy of Courts of Justice, and imperfect rudiments of their constitution, would go to deprive society of those valuable improvements to which their ripeness has attained. To intimate that fiction is an infirm basis for that authority which has for centuries rested on it, would not only be thus to contradict experience, but to forget that in the words of Blackstone, "the fictions of law are highly beneficial," and consequently, that we may deprive ourselves of the benefit by drying up its source; thus to recall us to the origin of jurisdiction is to retrograde, and to imminute conclusions which will not bear to be scrutinized; it is not because the Lord Treasurer and Chancellor of the Exchequer once sat upon its bench that the Lords of the Treasury, or he, should be now required to resume their seats, nor because the three superior courts were originally all but parts of the *Aula Regis*, that their present distinctness should be consolidated into that antiquated court again.

On the subject of "assimilation," so far as it is connected with the present constitution of the Court of Exchequer in the sister country, and as it is used for arriving at conclusions different from ours, we apprehend that it is not necessary to add to what we have already offered; we shall, accordingly, close this topic by referring and assenting to the opinion of the Solicitor General, as stated in the 14th page of the Report, "With respect to assimilation," (observes that learned gentleman) "two things are to be considered; first, whether the system already established in England is the best, even for that country; and secondly, whether it would be equally well suited to the circumstances of Ireland: it is obvious that the same system may not be equally well adapted to every state of society, and perfect similarity of theoretic principle may produce the greatest dissimilarity of practical result."

Accordingly, he proceeds to say that considerations, introduced by the passage which we have just extracted, "have induced him to abandon the principle of assimilation."

We have thus suggested to you, for the consideration of His Excellency, the reasons which have induced us to form an opinion against the course proposed, of transferring to the Court of Exchequer the trial of all Revenue Cases. Our opinion may be erroneous, and the reasons on which we have founded it infirm, but they are the result of the best consideration we have been able to give this important subject; and we now beg to conclude, in the words of my Lord Chief Baron, and, with him, to disclaim the most remote disposition to embarrass any measure calculated for the public service, which, on the contrary, it is our duty, and will always be our inclination, to promote.

We have, &c.

(signed) William Cosse Smith,  
Jr M'Clelland,  
Richard Pennefather.

A true Copy, W. Gregory.

The Right Hon. Henry Goulburn,  
&c. &c. &c.

—N° 5.—

## COPIES OF COMMUNICATIONS

BETWEEN

The Irish Government and the Commissioners of Judicial Inquiry in Ireland,  
UPON THE SUBJECTS  
*Of Remuneration of the Officers of the Court of Chancery in Ireland, by Fees,  
or by Fixed Salary:*  
*And, Investigation of the Office of Sheriff in Ireland.*

Return from the Commissioners of Judicial Inquiry in Ireland to the Order  
of the Honourable House of Commons, dated 7th February 1826;—for

Copies of all Communications between the Judges of the Courts of Equity and  
Law in Ireland and the Irish Government, and with the Commissioners of  
Judicial and Revenue Inquiry, respecting Measures proposed to Government  
by those Commissioners for consideration; between 1st May 1821 and  
1st February 1826; together with a Statement of Measures adopted in  
consequence.

## COMMUNICATIONS.

Gentlemen,

Dublin Castle, 22d September 1821.

YOU are of course aware that a Bill to regulate the Court of Chancery, founded  
on your First Report, has for some successive Sessions been introduced into  
Parliament; and I am directed by the Lord Lieutenant to call your attention to  
a circumstance connected with that Bill, which has excited considerable observation.  
It is the difference of the principle recognized in this Bill which has just passed into  
a law for regulating the Courts of Law with regard to the payment of the officers  
of the respective courts. The Chancery Bill maintains the principle of remunerat-  
ing the officers of the court by fees. The Law Courts Bill adopts the principle of  
remuneration by fixed salaries, and abolishes (with trifling exceptions) all fees.

The bills in each case are founded on the recommendations of your Board, and it  
is to this point that I am to request your attention. The Report on the Court of  
Chancery, in which you recommend a continuance of the principle of remuneration  
by fees, is your first Report; and as some years of investigation and experience passed  
before the framing of your subsequent Reports which recommend the adoption of  
the other principle, it would be satisfactory to know if you have seen any reason  
to change your opinion respecting remuneration by fees in the Court of Chancery.

With this view I am directed by his Excellency to request your re-consideration  
of your First Report, in so far as relates to this subject, and your early communi-  
cation to me for His Excellency's information of the result.

I have the honour to be, gentlemen, your most obedient humble servant,

The Commissioners of Inquiry  
into Courts of Justice.

C. Grant.

Sir,

Office of Inquiry, 9th November 1821.

In obedience to the desire of his Excellency the Lord Lieutenant, intimated  
to us in your letter of the 22d September last, that we should re-consider our  
First Report, so far as relates to the recommendations contained in it of a conti-  
nuance of the principle of remuneration by fees, and communicate to you for his  
Excellency's information, whether we have seen any reason to change our opinion  
respecting such recommendation, our subsequent Reports having recommended the  
adoption of the principle of remuneration by fixed salaries in the Courts of Com-

mon Law, we have given the subject the fullest consideration, and, after repeated discussion, beg leave to state as the result, that we do not conceive that the general adoption of the principle of remuneration by fixed salaries in lieu of fees in the Court of Chancery would be expedient. The duties to be discharged by many of the officers in the Court of Chancery (the Master and Six Clerks in particular) differ materially from those of the Courts of Law; and the objections which have been urged against the substitution of salaries for fees appear to us to apply with so much more force to the adoption of such a measure for the Court of Chancery that we should be apprehensive of the practical results. The only advantage to the suitors contemplated from the remuneration of the officers by fixed salaries in lieu of fees is their protection from exaction; the measures suggested in our first Report appear to us to be sufficient for that object, provided, however, that our recommendation be adopted of intrusting the duty of taxation to persons, or a tribunal composed of persons, wholly uninterested in the demands to be submitted to their control. Our experience and investigation, since the Report on the Court of Chancery was presented, has confirmed us more strongly in the opinion we there expressed of the necessity of such an establishment, in order to check and regulate such charges, and to prevent the encroachment of abuse in fees.

We have the honour to be, Sir, your most obedient humble servants,

To the Right Hon. Charles Grant,  
 &c. &c. &c.

*Dani<sup>l</sup> W. Webber,  
 Bertram Mitford,  
 Thomas Staples,  
 John Doherty.*

Sir,

Office of Inquiry, Dominick Street,  
 12th August 1824.

IN a recent communication relative to our pending investigation into the office of Sheriff in the several counties and cities in Ireland, we had the honour of representing to you that some obstacles had been opposed to the course of our inquiries concerning the execution of that office in the city of Dublin, by the neglect or refusal of certain individuals, who had formerly discharged the office of sub-sheriff in this city, to obey our precept requiring their attendance for examination.

In turning our attention to the practice which prevails in the exercise of the office of Sheriff in the respective counties and cities, or corporate towns at a distance from Dublin, we have ascertained, from such partial intelligence as we have yet been able to obtain, that an inquiry conducted solely in Dublin must fall short of such full and authentic information as may enable us to satisfy the expectations of Parliament, and of the Public, in reporting the results of the desired investigation, and to suggest suitable provisions to prevent the recurrence of the manifold irregularities which have unquestionably existed in different districts of the country. The parties who have actual knowledge of the real nature and extent of such irregularities are for the most part either wholly resident in the country, or only visit Dublin casually; and the allegations contained in the evidence of persons, whether of the latter class, or of persons residing in Dublin, frequently involve the agency of others not accessible here, whose testimony might become absolutely necessary, either to confirm or explain practices, complained of as culpable, and requiring to be remedied. The nature and obligations of the Sheriff's office also preclude us from calling the individuals who are at present acting in the discharge of it out of their respective bailiwicks.

The difficulties, therefore, which we feel it our duty to represent, as preventing an effectual prosecution of our inquiries on this very important subject, are twofold; the first arising from our want of power to enforce the authority which the terms of our commission would seem to imply that it was intended we should possess, namely, of compelling the attendance of persons for examination; and the last, from the want of some provision and express authority for transferring the seat of our inquiry occasionally to parts of the country where we may have reason to believe a scrutiny would be beneficial to the public.

Aware how much public attention has been directed to the present subject of our Inquiry, and foreseeing the benefit that may ensue from a successful discharge of the duty confided to us, we respectfully submit, for the consideration of His Majesty's

Majesty's Government, whether it is not expedient to remove these impediments to our progress, by adopting such measures as may be judged proper to make our powers effectually available, and to authorize us to transfer our sittings from place to place as we may see occasion, on the grounds alluded to in this and other communications.

We have the honour to be, Sir, your most obedient humble Servants,

To the Right Hon. Henry Goulburn,  
 &c. &c. &c.

*Danl W. Webber,  
 Thomas P. Dickenson,  
 Wm Wynne.*

Gentlemen,

Dublin Castle, 16th October 1824.

WITH reference to your letter of the 12th August, with respect to the difficulties you experience from the want of the power of compelling the attendance of witnesses for examination, I am to acquaint you, that a case having been by the Lord Lieutenant's directions referred to the law-officers of the Crown, they are of opinion that you are fully authorized by your commission to administer oaths, but that you are not authorized to enforce such answer by any compulsory process; such persons are however, in their opinion, guilty of a misdemeanor as refuse to answer a tribunal armed by the authority of the King's Prerogative to make inquiry on a matter properly subject to the regulations of the Crown; and that the proper and only course in such case will be to proceed by indictment against the persons so refusing.

I have the honour to be, gentlemen, your most obedient humble servant,

The Commissioners of Inquiry into Offices  
 of Courts of Justice, &c. &c. &c.

*W. Gregory.*

Sir,

Office of Inquiry, 22nd October 1824.

I AM directed by the Commissioners of Inquiry into the duties, salaries and emoluments of officers and ministers of justice in Ireland, to acknowledge the receipt of your letter of the 16th instant, stating that it was the opinion of the law-officers of the Crown that such persons as refuse to answer the Commissioners are guilty of a misdemeanor, and that the proper and only course in such case will be to proceed by indictment against the persons so refusing; and in consequence, I am directed by the Commissioners to acquaint you that Mr. William White, and Mr. George Archer, of Henrietta Street, and Mr. Walter Goulding, one of the bailiffs employed in the office of the sheriffs of the city of Dublin, have declined to attend the Board, although they have been served with precepts from the Commissioners requiring them so to do.

I have the honour to be, Sir, your most obedient humble servant,

*G. Fetherston, H.*

*Sec<sup>y</sup>. to the Commissioners*

To William Gregory, Esq.  
 &c. &c. &c.

Sir,

Office of Inquiry, Dominick Street,  
 23rd November 1824.

I AM directed by the Commissioners of Inquiry into the duties, salaries and emoluments of officers and ministers of justice in Ireland, to inform you that Mr. George Archer and Mr. William White, two of the persons named in the letter which I had the honour of addressing to Mr. Gregory on the 22nd ultimo, as having refused to attend the Commissioners, have now presented themselves before the Board, and expressed their willingness to attend and be examined when they shall be so required.

I have the honour to be, Sir, your most obedient humble servant,

*G. Fetherston, H.*

*Sec<sup>y</sup>. to the Commissioners.*

To the Right Hon. Henry Goulburn,  
 &c. &c. &c.

Sir,

Office of Inquiry, Dominick Street,  
23d November 1824.

I AM directed by the Commissioners of Inquiry into the duties, salaries and emoluments of officers and ministers of justice in Ireland, to acquaint you, that Mr. Nicholas Murray Mansfield, who has been for twelve years practically conversant with the office of sheriff of the city of Dublin, is now to be added to the list of persons whom I had the honour of reporting by my letter to Mr. Gregory of the 22nd October last, as having refused obedience to the precepts of the Commissioners, and under the following circumstances:

On the 6th July last Mr. Mansfield, then sub-sheriff of the city of Dublin, was required to fill up and return a schedule then sent to him; on the 31st of July last he was examined before the Board, and then undertook to return, within one month from that day, the schedule which had been so required. Not having performed that undertaking, he was called upon by a letter of the 5th of October last, and, subsequently, by letters of the 2nd and 9th of November instant to do so, but without effect; on the 16th instant he was served with a precept requiring him to attend to be examined on the following day, and to this he has declined rendering obedience, on certain grounds expressed in a letter, of which I have the honour to enclose a copy. On the 22nd November he was again served with a precept requiring his attendance on the 24th, and along with the precept a letter was delivered to him, requesting him to fix any hour most convenient to himself on that day, and to this precept and letter he has returned an answer, in which he has declined attending except on the terms expressed in his former letter, a copy of which last letter I have the honour to enclose.

I have the honour to be, Sir, your most obedient, humble servant,

G. Fetherston, H.

To the Right Hon. Henry Goulburn,  
&c. &c. &c.Sec<sup>y</sup> to the Commissioners.

Sir,

Office of Inquiry, Dominick Street,  
Dublin, 4th February 1825.

I AM directed by the Commissioners of Inquiry into the duties, salaries and emoluments of officers and ministers of justice in Ireland, to acquaint you, that in consequence of the difficulties and obstacles they have met with in pursuing the objects of their present investigation on the subject of the sheriffs office, the nature of which they have already had the honour of laying before you, they have deemed it advisable to address to His Majesty a brief Report, explanatory of those difficulties and obstacles, and humbly suggesting what they conceive would best tend to remove them, and facilitate their future progress in the important duty in which they are engaged.

I have the honour to enclose a copy of the above-mentioned Report, and to state the request of the Commissioners, that you will have the goodness to give it your earliest attention, so that it be laid before the House of Commons as speedily as the exigency of the case seems to them to require.

I have the honour to be, Sir, your most obedient and very humble servant,

G. Fetherston, H.

To the Right Hon. Henry Goulburn,  
&c. &c. &c.Sec<sup>y</sup> to the Commissioners.

Sir,

Office of Inquiry, Dominick Street,  
13th July 1825.

I AM directed by the Commissioners appointed to inquire into the duties, salaries and emoluments of officers and ministers of justice in Ireland, to acquaint you, for the information of his Excellency the Lord Lieutenant, that on the 21st day of June last Mr. Nicholas Murray Mansfield was served with a precept from this Board, requiring him to make a Return according to a form which had been sent to him, which requisition has not been hitherto complied with.

I am

I am desired by the Commissioners further to acquaint you, that on the 9th day of July instant, Mr. Mansfield was served with another precept, requiring his attendance, to be examined before the Commissioners on the 12th instant. To the directions of this precept Mr. Mansfield has refused his obedience, by a letter addressed to the Commissioners, of which I have the honour to inclose a copy, together with copies of the two precepts above alluded to. The Commissioners further beg to call your attention to a letter addressed to you, bearing date the 23d of November last, stating a former refusal of obedience to the precept of the Commissioners on the part of Mr. Mansfield, and the circumstances accompanying it.

The Commissioners have deemed it their indispensable duty, not to delay the communication of this new act of resistance on the part of Mr. Mansfield; and as it is the first case of contumacy which has occurred since the enactment of the statute specified in their precept, they feel it their duty to request the particular instructions of His Majesty's Government, as to the course which it will be proper for them to pursue; and they take this opportunity also to request instructions as to the form of the warrants proper to be used, on any occasion requiring such; and as to the mode in which such, if necessary, should be carried into execution.

I have the honour to be, Sir, your most obedient and very humble servant,

To William Gregory, Esq.  
&c. &c. &c.

*G. Fetherston, H.*  
Secy to the Commissioners.

Sir,

Office of Inquiry, Dominick Street,  
8th September 1825.

I AM directed by the Commissioners of Judicial Inquiry to represent to you, for the information of his Excellency the Lord Lieutenant, that some persons connected with the sheriff's department in different counties, while they have expressed their readiness to attend the Board for the purpose of examination, have required to be informed whether their travelling expenses are to be defrayed. And I am further to request the directions of his Excellency as to the course to be pursued by the Commissioners in cases where payment of expenses is required, by persons resident in the country, whose attendance the Commissioners may consider necessary for the purpose of their present Inquiry.

I have the honour to be, Sir, your most obedient humble servant,

To the Right Hon. Henry Goulbourn,  
&c. &c. &c.

*G. Fetherston, H.*  
Secy to the Commissioners.

Gentlemen,

Dublin Castle, 10th September 1825.

WITH reference to your letter respecting Mr. Nicholas Murray Mansfield's refusal to obey precepts which you had served on him, I am to acquaint you, that the said precepts were referred for the consideration of the Attorney-General, and I now send you three drafts of precepts which have been approved of by him.

By the Attorney-General's directions other forms of precepts are preparing, providing for cases of an imperfect, or insufficient answer; and of a party refusing, or neglecting to produce a document, or to make a return; which when completed will also be submitted for the consideration of the law adviser of the Crown.

I have the honour to be, gentlemen, your most obedient humble servant,

The Commissioners of Inquiry into Duties, &c.  
of Officers of Courts of Justice,  
&c. &c. &c.

*Henry Goulbourn.*

Gentlemen.

Dublin Castle, 15th October 1825.

I HAVE to acknowledge the receipt of your secretary's letter of the 8th instant, requesting that you may be informed as to the course to be pursued by you, where payment of expenses is required by persons resident in the country, whose attendance you may consider necessary for the purpose of your present inquiry; and having by the Lord Lieutenant's directions consulted his Excellency's law adviser upon the subject, I am to acquaint you, that the persons summoned to attend should attend and be examined without any previous stipulation as to expenses, which might imply a doubt as to your power to enforce attendance without a tender of expenses; but that after attendance and examination a reasonable payment for the travelling expenses of the parties should be made; and if they refuse to attend, the only course is to issue a warrant to bring them up to be examined, in which case their expenses must of course be paid.

I have the honour to be, Gentlemen, your most obedient humble servant,

*W. Gregory.*

The Commissioners of Judicial Inquiry,  
&c. &c. &c.

Sir,

Office of Inquiry, Dominick Street,  
20th October 1825.

I AM directed by the Commissioners appointed to make examination of the duties, salaries and emoluments of officers and ministers of justice in Ireland, to inform you, that Mr. John Connolly, of Cargies, in the county of Galway, has attended before them, and been examined, and has demanded the expenses which his attendance has induced; and that in pursuance of Mr. Gregory's letter of the 15th instant, they have given him a certificate, stating the place from which he came, in obedience to their requisition, and the number of days he has been under examination.

I have the honour to be, Sir, your most obedient humble servant,

*G. Fetherston, H.*

To the Right Hon. Henry Goulburn,  
&c. &c. &c.

Sec<sup>y</sup> to the Commissioners.

Gentlemen,

Dublin Castle, 26th October 1825.

I HAVE received your letter of the 20th instant, notifying your having given to Mr. John Connolly, of Cargies, in the county of Galway, a certificate of his having attended before you and been examined; and am to acquaint you that, in order to facilitate the payment of just and reasonable expenses to persons thus circumstanced, and to prevent their unnecessary delay in Dublin, a warrant has been prepared for placing to your credit in the Bank of Ireland the sum of 200*l.* to enable you to pay such as you may consider just and reasonable.

I have the honour to be, Gentlemen, your most obedient humble servant,

*Henry Goulburn.*

The Commissioners of Inquiry.

Gentlemen,

Dublin Castle, 29th October 1825.

With reference to a former communication, transmitting to you certain precepts, for your use, in the case of Nicholas Murray Mansfield, which were prepared by Mr. Townsend, and approved by the Attorney-General, I now transmit to you three additional precepts, which have been also prepared by Mr. Townsend, and approved by the Attorney-General; as also the instructions which were laid before the Attorney-General on this occasion, with his directions at the foot thereof.

I have the honour to be, Gentlemen, your most obedient humble servant,

*Henry Gaudern.*

The Commissioners of Inquiry.

---

True Copies.

*G. Fetherston H.*

Sec<sup>y</sup> to the Com<sup>rs</sup>.

COURTS OF JUSTICE  
(IRELAND)

---

COMMUNICATIONS

With the Commissioners of Judicial Inquiry,  
between the 1st of May 1861 and the 1st of  
February 1868.

---

Ordered, by The House of Commons, to be Printed,  
8 March 1868.

---